

September 28, 2006



Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth Street, SW
Washington, DC 20554

Re: *Notice of Ex parte* presentation in ET Docket Nos. 04-186, 04-151

Dear Ms. Dortch:

On September 27, 2006, Harold Feld of the Media Access Project and Michael Calabrese and Jim Snider of the New America Foundation (collectively "NAF") met with Barry Ohlson, Senior Legal Advisor to Commissioner Adelstein, with regard to the above captioned matters.

With regard to 04-186, NAF urged that the Commission should not, in the first *Order*, prohibit use of any particular interference avoidance technology or prohibit use of any specific channel (other than channels actually used by public safety and Channel 37). NAF stated that it would soon release the results of technical studies demonstrating the ability of "sensing" technology to avoid interference with occupied channels and demonstrating that use of the first adjacent channel will not create a danger of "desensitizing" DTV receivers.

Accordingly, NAF urged the Commission resist arguments to prohibit unlicensed operation on first adjacent channels. As Mr. Snider observed, the current DTV transition plan allows full power digital stations to operate immediately adjacent to one another. In addition, the current digital standard for radio, DAB, permits operation of competing full power stations in adjacent channels. It is irrational to suggest that high-power omnidirectional broadcasting transmitters can operate in complete safety next to one another, but that low power operation using interference avoidance technology cannot operate on an adjacent channel without causing interference.

Prohibiting use of the first adjacent channel would significantly reduce the available spectrum for productive use, particularly in crowded urban markets. Even if the Commission envisions primary use in rural areas, the economics of equipment manufacture and deployment will alter radically if the Commission does not leave adequate spectrum for at least some use in more developed areas. Unless equipment manufacturers can hope to achieve economies of scale, equipment for use in the band would remain expensive, limiting the ability of WISPs in rural areas to exploit the

available spectrum.

In determining whether to prohibit use on adjacent channels, the Commission should remain cognizant of the amount of spectrum “soaked up” in other proceedings, such as the DTS proceeding. If the Commission unnecessarily limits the spectrum available for productive unlicensed use in the name of prudence, it may drop the usable spectrum to a point where productive use is no longer feasible.

NAF also argued against any effort to license the white spaces or allow broadcasters to control or charge for access, such as the “beacon” proposal in the *NPRM*. Any such proposal would impose needless costs and barriers to the efficient use of the white space.

With regard to 04-150, NAF noted that several additional new parties have made recent *ex parte* presentations in support of the existing rules. Given the continued progress of the IEEE 802.18 Committee to set a standard compatible with the Commission’s rules, and continued improvements in contention-based technology, the Commission should reject the arguments that the existing rules represent a barrier to deployment. By contrast, the “dual approach” advocated by Intel and others would create significant confusion and delay in deployment while the Commission developed service rules and auctioned licenses. If the Commission continued to have concerns that interference might occur in urban areas, the Commission should respond by adopting the proposal made by CUWN and Tribal Digital Village in the initial rulemaking and impose lower power limits on devices deployed in urban areas.

Finally, the Commission should consider that if it forecloses significant portions of the market from unlicensed use, it will deny equipment manufacturers the opportunities to enjoy economies of scale. A scheme which permitted unlicensed use only in “rural” areas might result in equipment so expensive as to render the anticipated use in rural areas uneconomical.

In accordance with Section 1.1206(b) of the Commission’s Rules, 47 C.F.R. § 1.1206, this letter is being filed with your office. If you have any questions, please do not hesitate to contact me.

Respectfully Submitted,

Harold Feld
Senior Vice President

cc:
Barry Ohlson